



BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

THE OPINIONS OF THE COURTS BELOW.

The Findings of Fact and Conclusions of Law of the trial court of Toole County, Montana, are set forth in the Transcript on page 116.

The opinion of the Supreme Court is set forth in the Transcript on page Tr. 675 to 681.

The petition and answers in the Wyoming case are set forth in Exhibit 8 on pages 29 to 49, and 81. (Tr. 691-795)

The motion of respondent for an order vacating the Wyoming judgment is set for in Exhibit 8 on pages 232 to 236, with the decision thereon found on pages 243 to 247 of Exhibit 8.

The order of the Court denying the motion to vacate was affirmed in the Circuit Court of Appeals in Volume 91 Federal Reporter, Second, page 857.

II.

JURISDICTION.

1. The date of the decision by the Supreme Court of the State of Montana and judgment to be reviewed is March 18th, 1940. (Tr. 675-681)

2. The Supreme Court of the State is the highest Court of the State of Montana, and when judgment is rendered it must be certified immediately to the Clerk of the Court from which the judgment appealed from was entered. (R. C. M. 9752, 8805).

3. The statutory provisions which are believed to sustain the jurisdiction of this Court are

- (a) *Judicial Code*, Sec. 237;
- (b) *As amended by Act of February 13th, 1935, Title 28, U. S. C. A.*, Sections 344 and 350;
- (c) *Revised Statutes*, Section 905; *Title 28 U. S. C. A.*, Section 687.

4. The complaint filed in the District Court of Toole County, Montana on June 15th, 1933, and as amended, was predicated upon the properly authenticated judgment rendered in the United States District Court of Wyoming in the action of petitioner against Ferdig Oil Company through whom the respondent herein claims; that respondent was a party to said action in Wyoming but failed to disclose any interest in the property involved herein, although he now claims to have owned the property at the time of said trial. (Tr. 2-21)

Respondent's answer here admits the Wyoming suit and the issues therein tried as claimed by petitioner, but alleges as a defense that the Court was without jurisdiction because its jurisdiction was invoked on the ground of diversity of citizenship that Lowe, one of the joint adventurers, was not served with a subpoena nor did he come voluntarily into Court, hence there was an absence of indispensable parties. (Tr. 22)

Respondent further answered admitting that ever since the 10th day of July, 1931 he has been and still is in possession of said wells, tools, machinery and equipment, and has caused some of the wells to be operated, and that he bid in at judicial sale all the right, title and interest of the Ferdig Oil Company in said oil and gas leases covering the lands in question. He also alleged that he acquired certain tax certificates (on which title was never perfected.) (There was no claim raised in the answer that the Court in Wyoming had no jurisdiction over the property and subject matter involved).

5. The pleadings directly drew into question the full faith and credit clause of the United States Constitution.

6. In establishing a prima facie cause in the District Court of Toole County, Montana, petitioner relied entirely upon the properly authenticated Findings, Conclusions and Decree in the Wyoming suit as having established the contract and its performance by petitioner as his source of claim, and that further evidence or additional proof was presented as to the leaseholds and other property acquired by S. C. Ferdig in Toole County, Montana, and their transfer to Ferlig Oil Company and thence to respondent Thelen.

7. In refusing to recognize the validity of said judgment and decree by receiving over petitioner's objections evidence tending to again litigate the issues tried in the Wyoming Court, the trial Court of Toole County, Montana of necessity gave consideration to the constitutional question because it subjected said judgment and decree to collateral attack and in reaching its conclusion ignored the plain effect of such judgment and decree and invoked an exception to the full faith and credit clause where a contract, trust and fraud is established.

8. Likewise, the Supreme Court in affirming the judgment of the District Court of Toole County, failed to give full faith and credit to the judgment entered in the United States District Court for the District of Wyoming, and failed to recognize that the Wyoming suit was based upon a contract involving a trust and fraud.

The full faith and credit clause of the Constitution was therefore invoked:

- (a) in the pleadings;
- (b) in the offer of the duly authenticated copies of the Findings, Conclusions and judgment, entered in Wyoming;
- (c) in the refusal of the Court to recognize the validity and effect of said Findings, Conclusions and Judgment as an adjudication;
- (d) in the briefs and arguments presented to the Court.

This is evidenced by the record including the decision of the trial Court and the Court of Appeals.

9. The following cases sustain the jurisdiction of this Court to review the decision and final judgment affirming the trial court of Toole County, Montana.

Embry vs. Palmer, 107 U. S. 3;

Hancock vs. Farnum, 176 U. S., 640;

West Side R. R. vs. Pittsburgh Construction Co., 219 U. S. 92;

Acme Harvester vs. Beekman Lbr. Co., 222 U. S., 300;
Rollin vs. Murphy, 234 U. S., 738;
Knights of Phythias vs. Meyer, 265 U. S. 30;
Roche vs. McDonald, 275 U. S. 449;
Honeyman vs. Honan, 300 U. S. 14;
Adams vs. Saenger, 303 U. S., 59;
Titus vs. Wallich, 306 U. S. 282.

Title 28 U. S. C. A. Sec. 344.

34 C. J. 1160, note 59.

III.

STATEMENT OF THE CASE.

A full statement of the case having been given under the heading in "A" in the petition, no repetition of the statement will be made at this time, but such statement is hereby adopted and made a part of this brief.

IV.

SPECIFICATIONS OF ERROR.

The reasons relied on for the allowance of the petition appear in the Petition for the Writ, and may be summarized as follows:

A. The Court erred in failing to give full faith and credit to the judgment entered in the United States District Court for Wyoming, because—

1st. The trial court erred in receiving and considering evidence in respect to the contract between petitioner and S. C. Ferdig which constituted a re-trial of the issues already litigated in Wyoming and tending to impeach the judgment there rendered, and erred in concluding that no agreement existed between petitioner and said Ferdig, notwithstanding the litigation and determination of the issues by the United

States District Court of Wyoming, which action of the trial court was sustained by the Supreme Court of Montana.

2nd. The Courts of Montana concluded that the Wyoming judgment was not *res adjudicata* for want of jurisdiction;

3rd. The trial court erred in receiving and considering the testimony of Lowe to the effect that there was no contract between Wilson, Ferdig and Lowe, although Lowe admitted upon cross-examination that he had written a letter in which he stated that said Wilson had performed his part of the agreement, and "had a one-third interest in the enterprise."

B. The Court erred in concluding that the Wyoming Court was without jurisdiction over the subject of the action, and in concluding that the subject of the action was solely title to real estate, and that the action was local.

C. The Court erred in concluding that Lowe was an indispensable party to the Wyoming action.

D. The Court erred in concluding that respondent acted in good faith and that petitioner was guilty of laches, because—

1st. The question of good faith and laches is not a material issue if the judgment entered in Wyoming against the Ferdig Oil Company is valid.

2nd. Because it appears from the evidence that appellant was diligent in prosecuting his cause, and there was no evidence of any damage sustained by respondent by reason of the matter of delay.

ARGUMENT

SUMMARY OF THE ARGUMENT

Point I. The prosecution of this action by petitioner against respondent in Montana of necessity raised and involved a con-

stitutional question because petitioner's action was predicated upon a judgment of Wyoming. The question was disposed of in a manner directly derogatory to petitioner's constitutional rights. Therefore petitioner here seeks to invoke this Court's jurisdiction.

Point II. Petitioner's judgment and decree remain unimpeached and unimpeachable in the Courts of the United States and the Courts of the various states.

Point III. The defendants in this trial of the Wyoming action having answered to the merits, and having pleaded affirmative defenses upon which they asked relief, submitted themselves and their rights in the controversy to the full jurisdiction over their persons and over their property wherever situated in which petitioner claims an interest.

Point IV. The Wyoming suit was predicated upon a contract, trust, and fraud which sustain jurisdiction of the Court because of its jurisdiction over the person of the defendants and the issues as to the existence and terms of the contract. The determination of title to lands and leaseholds and other personal property in question was an incident to the litigation of all issues between the parties.

Point V. The judgment against the Ferdig Oil Company binds it, and those in privity with it, including respondent.

POINT I. The prosecution of this action by Petitioner against Respondent in Montana of necessity raised and involved a Constitutional question because Petitioner's action was predicated upon a Judgment of Wyoming. The question was disposed of in a manner directly derogatory to Petitioner's Constitutional rights. ...Therefore Petitioner here seeks to invoke this Court's jurisdiction.

This issue was clearly presented to the Court:

FIRST — In the complaint which alleged the contract and rights of the parties as having been litigated in Wyoming, and in the recital of the Findings of Fact, Conclusions of Law and Decree therein as the basis for the recovery in the Montana case:

SECOND — In presenting in evidence the duly authenticated proof of the Findings of Fact, Conclusions of Law and judgment in the Wyoming case and the reliance thereon to prove the claims of petitioner:

THIRD — In the attempt of respondent and Ferdig Oil Company and F. J. Buscher to vacate the judgment in Wyoming to the extent of appealing to the Circuit Court of Appeals, Tenth Circuit:

FOURTH — In the arguments and brief presented in the trial court and on appeal:

FIFTH — In the Findings of Fact and Conclusions of Law of the trial court that a judgment and decree was entered in the Wyoming case decreeing this petitioner to be the owner of a one-third interest in the lands and leases acquired by S. C. Ferdig but that the action was local and "the decree binding and effective only upon property within the jurisdiction of the court";

SIXTH — In the appeal to the Supreme Court by assignment of errors and by brief and argument:

SEVENTH — In the decision of the Supreme Court in holding "there would be merit in plaintiff's contention (that the Wyoming decree adjudicated the title and ownership to lands involved) if the Wyoming Court had jurisdiction to litigate title to lands in Montana, but it is firmly established that an action to determine title to or an interest in real estate is local and that the courts of one state have no jurisdiction to litigate the title to lands in another State."

This Court, in determining its own jurisdiction, has uniformly and repeatedly held that where suit is filed in one state on a judgment procured in a sister state, or in a United States Court sitting in a sister state, the question presents one arising under the constitution of the United States as has already been pointed out in the Writ under Section II and subject of jurisdiction.

Hancock vs. Farnum, 176 U. S., 640

As already pointed out, this constitutional question was kept in the fore ground not only by presenting the decree in the Wyoming case and relied upon here, but in the pleadings, brief and argument.

Arme Harvester Co. vs. Beekman Lbr. Co., 222 U. S., 300.

The right to a review is recognized if it appears from the record that such rights were brought to the attention of the State court in due time.

Bryant vs. Zimmerman, 278 U. S. 63.

POINT II. Petitioner's Judgment and Decree remain unimpeached and unimpeachable in the Courts of the United States and the Courts of the various States.

The jurisdiction of the Wyoming Court was challenged by respondent, by Ferdig Oil Company and by the other defendants—

First, on motion to dismiss, which was denied;

Second, by answer, and the Court decided the matter adversely to the defendants;

Third, by motion of respondent and Ferdig Oil Company to vacate the judgment and for dismissal of the action, which motion was denied;

Fourth, By appeal to the Circuit Court of Appeals for the Tenth Circuit, which determined the question adversely to the moving parties in a decision which sustained the trial court.

Ferdig Oil Co. vs. Wilson, 91 Fed. Sec. 857.

If a judgment is valid and conclusive between the parties in the State where rendered, it is equally conclusive under the full faith and credit clause in the courts of any other State where presented.

Christmas vs. Russell, 72 U. S., 290;

Embry vs. Palmer, 107 U. S., 3, 9;

Hancock vs. Farnum, 176 U. S., 640, (644)

McDonald vs. Mabee, 243 U. S., 90;

Roche vs. McDonald, 275 U. S., 449;

Titus vs. Wallich, 306 U. S., 282;

Adams vs. Saenger, 303 U. S., 59.

While the trial court may, when a foreign judgment is presented to it, inquire into the question of jurisdiction, yet the extent of jurisdiction must be determined by the law of the State where rendered.

The presumption exists that the Court in Wyoming acted within its jurisdiction and that the judgment is valid and binding.

15 R. C. L., 893, Sec. 373.

The effect of a foreign judgment in a court having jurisdiction to pronounce the judgment is governed by the Statutes of Montana as follows:

FIRST — In case of a judgment against a specific thing, the judgment is conclusive upon the title to the thing;

SECOND — "In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title, and can only be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law."

R. C. Mont. 10565

"The effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced here by an action or special proceeding."

R. C. Mont. 10563

See Christmas vs. Russell, 72 U. S. 290

The present suit is such a proceeding as is contemplated in the Statutes of Montana cited above, and is brought to enforce

the rights under the agreement as determined by the judicial record of the Wyoming suit and as contemplated by the Montana Code, Section 10563.

Faunteleroy vs. Lum, 210 U. S. 230;

Elmoyle vs. Cohen, 13 Peters, 312.

The Wyoming Court obtained full jurisdiction when all the parties submitted the issue as to whether there was a contract and if so, what were the terms thereof, and whether or not that contract had been performed or breached.

POINT III. The Defendants in this trial of the Wyoming action having answered to the merits, and having pleaded affirmative defenses upon which they asked relief, submitted themselves and their rights in the controversy to the full jurisdiction of the Court over their persons and over their property wherever situated in which petitioner claims an interest.

S. C. Ferdig was, at the time of the commencement of the action, in August, 1929, a resident of Wyoming. He was then President and manager of the Ferdig Oil Company, a Delaware Corporation. Both of these defendants must therefore be considered residents of the State of Wyoming and within the jurisdiction of the Court. Respondent Thelen, while a resident of the State of Montana at that time, appeared with the other defendants including Ferdig Oil Company and S. C. Ferdig, and answered to the merits, and pleaded affirmative defenses on which relief was asked. These defendants, whether residents of Wyoming or not thereby submitted themselves and their rights to the property claimed by petitioner to the full jurisdiction of the Court.

In *Dunlop vs. Byers*, 110 Mich., 109, 67 N. W. 1067, the Court of Michigan gave effect to the judgment rendered in Ohio in a suit for the dissolution of a partnership and for an accounting.

Fosters Federal Practice, 4th Ed. Chapter VII.

Attention is called to the fact that the action in Wyoming involved personal property such as the equipment and proceeds from the oil production on the lands in question. The leasehold interest being granted for the period of oil production and subject to compliance with certain conditions may be treated as personal property, but, whether treated as personalty or realty, the action in Wyoming involved personal property which is purely a transitory cause of action and the Court having jurisdiction over these parties litigated these issues. The trial court and the Supreme Court in determining this litigation failed to give full faith and credit to the judgment entered in Wyoming based on a transitory cause of action involving personal property and erred in this respect.

POINT IV. The Wyoming suit was predicated upon a contract, trust and fraud which sustain jurisdiction of the Court because of its jurisdiction over the person of the Defendants and the issues as to the existence and terms of the contract. The determination of title to lands and leaseholds and other personal property in question was an incident to the litigation of all issues between the parties.

The Courts of Montana erred in concluding that the Wyoming Court had no jurisdiction over the subject matter,—

FIRST, Because they failed to distinguish between an action involving only title to lands in the nature of an action to quiet title and an action brought to construe a contract and to determine rights thereunder, not only to real estate, but to personal property and for a division of profits;

SECOND, Because the Courts failed to consider the nature of a joint adventure and an action for an accounting for property and failed to consider funds and assets in the hands of a joint adventurer to be a trust and to be personalty whether real estate or other property;

THIRD, Because the Court concluded contrary to the Circuit Court of Appeals, Tenth Circuit, in *Ferdig Oil Company vs. Wilson*, 91 Fed. 2nd, 857, that by the ap-

pearance of respondent Thelen in Wyoming he did not submit himself and his property rights to the jurisdiction of the Wyoming Court, and the Court failed to give consideration to the fact that the Ferdig Oil Company was within the jurisdiction of the Court and all of its rights were submitted to litigation;

FOURTH, Because the Court ignored the fact that personal property was an issue in the Wyoming suit.

The result of the decision would be the increased litigation in every State where property of a party or joint adventurer might be situated. It would mean that although the action involved title to personal property, which is purely transitory, yet, if as an incident to determine all the right under a contract, title to real estate were involved, then the Court would lose jurisdiction of the cause. The Courts of Montana characterize the Wyoming action as local and that the Court was without jurisdiction to determine appellant's interest in personal property.

The complaint in the Wyoming action alleged:

The agreement between S. C. Ferdig, petitioner and H. L. Lowe, whereby each should have a one-third interest in and to all of the assets and profits of the joint enterprise: (Exhibit 8, par. 3)

Describes leaseholds and personal property involved in the present action: (Par. 6)

Alleges that Ferdig conveyed the same to the Ferdig Oil Company in fraud and with full knowledge of the corporation that the petitioner owned a one-third interest therein: (Par. 25)

That a fraud was perpetrated upon the petitioner and the defendants holding title to the property were involuntary trustees acquiring the title with the knowledge of Petitioner's claims: (Par. 33 and 34)

That the Ferdig Oil Company held the lands in trust; that the action was brought for a final determination of the rights of all the parties having or claiming an interest

in or to the real estate, leases, or other property of the defendants, to the end that the same may be fully adjudicated: (Par. 36)

The complaint then closed with a prayer that the defendants disclose what property or money was received by them from any of the defendants and that said property be set apart to petitioner and the other joint adventurers their interest and share therein, and that any transfer by the defendants of any property, money or effects belonging to petitioner, or in which he has an interest, be declared fraudulent and void, and that recovery be had for the use and profit thereof.

The answers of respondent and Ferdig Oil Company and S. C. Ferdig denied the contract (Par. 4 and 9); described leases upon the lands involved herein (Par. 5 and 6); admitted that S. C. Ferdig conveyed lands in Montana to the Ferdig Oil Company, (Par. 9 and 10); but denied that these lands were acquired with any money or property of the joint enterprise, (Par. 19) and denied that they were holding any property of the joint enterprise, (Par. 19); denied the agreement sued on, (Par. 29); denied that they were trustees of the property of the joint adventure (Par. 35 and 36); denied that the action was brought for a final determination of the right of the parties to the real estate, leases and personal property, (Par. 36); asserted the statute of limitations of Montana and Wyoming (Par. 3 and 6 of the First Separate Defense) and alleged defensive laches (Par. 4 of the Fourth Separate Defense) and prayed for judgment and further relief.

The trial court in Wyoming characterizes the action in his memorandum as follows:

This is a suit in equity in which the complainant seeks to have established a trust in certain properties and an accounting from the defendants under a joint adventure agreement entered into in 1924 involving the exploitation of lands for oil content."

The Court in Wyoming found as a fact that the rights of Lowe were not involved in the litigation; that an agreement of

joint adventure was made in January, 1924, between Wilson, Ferdig and Lowe to the effect that lands and leases should be acquired and developed and that "each should own and hold a one-third interest in the property thereafter to be acquired by S. C. Ferdig and the assets resulting from the joint enterprise until an accounting should be had by said Ferdig." (Tr. 108 to 115)

The Court found that petitioner performed his agreement and advanced, or paid to S. C. Ferdig \$10,000.00, and Ferdig transferred to the Ferdig Oil Company and other defendants lands and other personal property acquired by him in Montana and Wyoming with the knowledge and notice of petitioner's claim.

The Court concluded that petitioner owned a one-third interest in lands and leases and personal property acquired by S. C. Ferdig and that the Ferdig Oil Company and other defendants should account to petitioner therefor. (Par. 1 and 2)

The decree was entered pursuant to the Findings of Fact and Conclusions of Law.

It appears from the foregoing that the title to the lands and leases and other personal property in Montana was incident to the full and final determination of the rights of petitioners to all the assets of the joint adventure and agreement sued upon.

In adjusting the rights of partners between themselves real estate owned by the partnership is treated in equity as personal property with power in the Court to determine what property belongs to the partnership.

Coleman vs. Apple, 298 Fed. Rep. 718

Allen vs. Withrow, 110 U. S. 119

Riddle vs. Whitehill, 135 U. S. 621

Had no judgment been obtained in Wyoming, petitioner to establish his claim in Montana would have been required to allege and prove—

(a) The agreement of joint adventure and under it a claim or title to a one-third interest in the assets;

- (b) Performance of the agreement;
- (c) Acquisition of lands and leaseholds and personal property by Ferdig pursuant thereto;
- (d) Failure or refusal of Ferdig and his assignee, Ferdig Oil Company, to convey to petitioner;
- (e) Conveyance to Ferdig Oil Company with knowledge of petitioner's claim;
- (f) Acquisition by respondent with knowledge of petitioner's claim.

If the Wyoming judgment is held to be binding the requirements of (a), (b), (c), (d) and (e) would have been already litigated. These all relate to a personal contract and present a transitory action, leaving only the question of the acquisition by respondent with knowledge of petitioner's claim to be litigated and proved in the Montana Court. The Supreme Court of Montana resolved this question in favor of petitioner in holding that the respondent acquired the lands in Montana with the knowledge of petitioner's claim thereto.

Consequently the petitioner by this action seeks to enforce his rights under an agreement duly established by a court of competent jurisdiction. Had the Ferdig Oil Company not been personally within the jurisdiction of the Wyoming Court, or not having appeared by answer and asserted affirmative relief, the conclusion of the Montana Court as to jurisdiction of the Wyoming Court would probably be correct.

As sometimes stated, the decree, so far as it relates to land in another state, may have no extra territorial effect, yet, if valid, it binds personally those who were parties to the case and can be enforced where the land lies by proper proceedings conducted for that purpose, and such parties are estopped to again litigate the issues thus determined. This is precisely the purpose of the present litigation.

Massie vs. Watts, 10 U. S. (6 Cranch) 148

Cheaver vs. Wilson, 76 U. S. 108 (121)

Phelps vs. McDonald, 99 U. S. 298

Cole vs. Cunningham, 133 U. S. 107

Carpenter vs. Strange, 141 U. S. 106

14 *Am. Juris*, pg. 434, Sec. 242.

While in some respects it would appear that this principle is challenged, yet it is submitted that a distinction is made where the courts refuse to consider a foreign judgment as binding lands in other states.

That is, if the judgment itself, attempts to create the right or claim to lands in another state, it will not be enforced there, neither will it be recognized as of itself transferring title.

But where the right to lands arises out of contract, or is the result of fraud or a trust, and such right, question or fact has been directly put in issue and has been directly determined by a decree in equity by a court having jurisdiction over the parties, such a decree may be enforced by action in the state where the lands lie. The defendant in the foreign suit, and those in privity with such defendant are estopped to again litigate the issues thus litigated.

This proposition may be thus stated—If a court of equity has jurisdiction over the person, it may act indirectly through the instrumentality of this authority over the person. Whatever may be done through the party the Court may do to give effect to its decree respecting property whether it goes to the entire disposition of it, or imposes a burden upon it.

Hopkins vs. Lee, 6 Wheaton, 114

Lewis vs. Darling, 57 U. S. 1

Southern Pacific R. R. Co. vs. U. S., 168 U. S. 1, 48

Michigan Trust Co. vs. Ferry, 228 U. S. 346

Roche vs. McDonald, 275 U. S. 449

Norton vs. N. Y. House of Mercy, 101 Fed. 382

Uphoff vs. Meier, 87 Pac. 960

Story on Conflict of Laws, Sec. 544

3 *Pomeroy on Equity*, 4th Ed., Sec. 1318

1 *Fosters Fed. Practice*, 6th Ed. page 984

POINT V. The Judgment against the Ferdig Oil Company binds it, and those in privity with it, including Respondent.

Respondent, as purchaser at the decretal sale of Oil Well Supply Company vs. Ferdig Oil Company, must be considered in privity with the Company.

Thelen vs. District Court, 93 Mont. 49, 17 Pac. 2nd 57.

Respondent acquired his alleged interest with the knowledge of the claim of petitioner, and hence subject to his one-third interest therein.

Griffith vs. Thrasher, 94 Mont. 238, 26 Pac. 2nd, 983

Thelen vs. District Court, 93 Mont. 49, 17 Pac. 2nd, 57

Martin vs. Lawrence, 157 Calif., 191, 103 Pac. 913.

40 C. J. 508 Sec. 757.

Under the laws of Montana the lien of a judgment does not attach to the legal title to the exclusion of a prior equitable title. The purchaser takes what the debtor had.

Story vs. Black, 5 Mont. 26

23 C. J. 747, Sec. 789

The laws of Montana provide that a final judgment in a Court having general jurisdiction to pronounce the same—

“is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceedings litigating for the same thing, under the same title, and in the same capacity, provided they have notice, actual or constructive, of the pendency of the action.”

R. C. Mont. 10558

The Wyoming judgment is conclusive, not only as to the matters actually determined thereby, but also as to any other matters which might have been litigated and determined upon the issues made in the case and upon which the case was actually tried.

Phillips vs. Griffin, 236 N. Y. App. 209

U. S. vs. Calif. & Oregon Land Co., 192 U. S. 358.

Freeman on Judgments, 5th Ed. 753, 756.

Especially is this principle to be applied when the very nature of the litigation required the Ferdig Oil Company and Thelen to assert their claims they made to the property.

The effect of the Court's refusal to recognize the Wyoming judgment construing the contract and determining the rights thereunder was to permit respondent to re-litigate the issues determined in the Wyoming suit.

Cromwell vs. County of Sac, 94 U. S. 351

Dowell vs. Applegate, 152 U. S. 327 (342-344)

Nor. Pac. Ry. vs. Slaght, 205 U. S. 122.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the writ of certiorari should issue.

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